IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,

AT HYDERABAD

HON'BLE SRI JUSTICE V.V.S. RAO

W.P. No. 22642 OF 2005

Date: 27.10.2005

BETWEEN:

Sri K. Muralimohan

.... PETITIONER

And

1. The State of Andhra Pradesh, rep. by the Collector, Hyderabad District, and others.

.... RESPONDENTS

HONOURABLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No. 22642 OF 2005

ORDER:

The petitioner seeks a Writ of Mandamus declaring the action of the Mandal Revenue Officer (MRO) in taking steps to survey the land in S.Nos.294/1 to 294/12 admeasuring Acs.10.00 situated at Gudimalkapur village, Hyderabad under A.P. Survey & Boundaries Act (for short 'the Act'), as arbitrary and illegal and for a further direction to the

MRO to forbear from conducting any survey in respect of the land. Be it noted that the MRO issued a notice to the petitioner on 18.10.2005 informing the petitioner's General Power of Attorney holder (GPA) that survey of land in TS.No.12, Block No. N of Ward No.21 of Bojagutta of Gudimalkapur village would be taken up on 22.10.2005. Therefore, the present writ petition is filed.

The petitioner claims to be the absolute owner of the land in S.Nos.294/1 to 294/12, which was purchased by the petitioner's father from Sri Gokulchand, who in turn purchased from the Custodian of Evacuee Properties. The petitioner also alleges that Sri Syed Aminuddin and three others filed a suit being O.S.No.355 of 2002 on the file of the Court of the Second Senior Civil Judge, City Civil Court, Hyderabad and the said Court passed ex parte decree on 2.9.2002 for specific performance of agreement of sale allegedly executed by the fourth respondent in favour of the plaintiff therein. The petitioner alleges that though the G.P.A. holder of the petitioner is arrayed as third defendant in the said suit, no summons were served on him by the Court. The petitioner further alleges that the decree passed by the Civil Court in O.S.No.355 of 2002 is a result of collusion between the plaintiffs and the fourth respondent herein, who is defendant No.1 in the said suit. After passing of decree, it is alleged that the fourth respondent made an application to the MRO for conducting survey in respect of the land in dispute, but, the MRO is proceeding with the enquiry without considering the objections raised by the petitioner.

As there is a serious dispute regarding the title of the petitioner as disclosed in the counter affidavit filed by the MRO, this Court also directed the learned counsel for the fourth respondent to file counter affidavit. The fourth respondent in his counter denies the title of the petitioner and states that she purchased an extent of Acs.1.00 and 3906 Sq. yards of non agricultural land from Colonel Nazeer Ul Islam Khan in S.No.205/3 (old) corresponding to S.Nos.294/1 to 294/12 (new) and that the petitioner cannot claim the land, and therefore, cannot raise any objection, if the survey is conducted. The fourth respondent further denies the knowledge of O.S.No.355 of 2002 filed in the Civil Court, nor the ex parte decree passed therein. In her counter affidavit, the fourth respondent also referred to other litigation in respect of the same property.

In the counter affidavit filed by the MRO on behalf of the respondents 1 to 3, the title of the petitioner to the land in S.Nos.294/1 to 294/12 (new) corresponding to S.No.205/3 (old), is denied. It is stated that the land in S.Nos.294/6 and 294/11 is an evacuee property and as the name of the petitioner is entered in the Revenue Records, the petitioner was given notice for survey and demarcation of the land.

A reading of the counter affidavit filed by the MRO on behalf of the respondent Nos. 1 to 3 and the counter affidavit filed by the respondent No.4 would show that the MRO has taken up survey at the request of the fourth respondent for demarcation of the land admeasuring Acs.1.00 and 3906 Sq. yards, whereas the petitioner is claiming entire extent of Acs.10.00 of land in S.Nos.294/1 to 294/12 (new) corresponding to S.No.205/3 (old) which the petitioner's father allegedly purchased from Gokulchand, who in turn purchased from the Custodian of the Evacuee Properties. Therefore, there cannot be any objection for the MRO to consider the representation/objections filed by the petitioner before taking up survey to demarcate the land allegedly belonging to the fourth respondent. In the meanwhile liberty is given to the petitioner as well as the fourth respondent to approach the Civil Court,

if they so desired, and seek to set aside the ex parte decree in O.S.No.355 of 2002 dated 2.9.2002, if they have not already filed such an application. It shall be open to the petitioner and fourth respondent to file any additional documents before the MRO.

For the above brief reasons this Writ Petition is disposed of at the admission stage directing the MRO to consider the objections filed by the petitioner and the fourth respondent along with necessary documents and pass appropriate orders before taking up survey of TS.No.12, Block No.N of Ward No.21 correlated to S.Nos.294/1 to 294/12 (new) Gudimalkapur village of Asif Nagar Mandal, Hyderabad. This exercise may be completed within a period of six weeks from the date of receipt of a copy of this order.

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(**V.V.S. RAO, J.)**

27th October, 2005

Js.